

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

FILED
2015 MAR 24 AM 11:58
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED

APR 24 2015

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KAW

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 15 KAW 1848

Derek Russell

Plaintiff,

vs.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SONOMA

Defendant.

CASE NO: **CV 15 1355**
NOTICE OF REMOVAL OF ACTION
PURSUANT TO 28 U.S.C. SECTION 1441(b)
Complaint Filed: March 24, 2015
Hearing: March 26, 2015
1331

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT Plaintiff Derek Russell hereinafter Russell hereby removes to this Court the state court action described below, pursuant to 28, USC SECTION

1441(B).
1331

1. On February 18, 2015 an action was commenced in the Superior Court of the State of California for the County of Sonoma, entitled PEOPLE OF THE STATE OF CALIFORNIA v Derek Russell, Individual.
2. CASE NOS: CHP84976TQ and SRO 1418580

Case4:15-cv-01355-KAW Document3 Filed03/24/15 Page2 of 47

- 1 3. This action is a civil action of which this Court has original jurisdiction under 28
2 USC 1331 and is one which may be removed to this Court be Plaintiff herein
3 pursuant to the provisions of 28 USC ~~1441~~ ET SEQ. ¹³³¹
- 4 4. This notice of removal is timely.
- 5 5. As required by 28 USC ~~1441~~ ¹³³¹ TRUE AND CORRECT COPIES OF PLEADINGS
6 SERVED UPON Russell are being filed with this Notice of Removal, attached hereto
7 as Exhibit A.
- 8 6. Removal of this action is proper under 28 USC ~~1441~~ ¹³³¹ because it is a civil action
9 brought in a state court and the federal district court have original jurisdiction of the
10 subject matter pursuant to 28, USC ~~1441~~ ¹³³¹ because the causes of action are plead under
11 federal statutes.
- 12 7. Therefore pursuant to these statutes and in conformmance with the requirements set
13 forth in 28 USC ~~1441~~ ¹³³¹, Russell hereby removes this action from the Superior Court of
14 the State of California for the County of Sonoma to the Northern District.

15 DATE: March 24, 2015



Derek Russell

Case4:15-cv-01355-KAW Document3 Filed03/24/15 Page3 of 47



Superior Court of California, County of Sonoma

Traffic Division - Room 109-J

600 Administration Drive

Santa Rosa, CA 95403-2878

TRAFFIC COURT MINUTES

Courtroom: 14 Date: 3/20/2015 Time: 10:30
 Judicial Officer: WHEELDIN, ANTHONY Interpreter:
 Clerk: Pat Graham Language:

Case Information

Case #: SRO1418580 Defendant: Russell, Derek Pay/Appear:
 DOB: 09/11/1967 Officer: Alan Rosenthal (367) DL #: C5969182
 Citation Date: 12/02/2014 Address: 735 Pine St Santa Rosa, CA 95404

Appearances & Waivers

- Defendant Present

Fines & Fees

Cnt	Code	Plea	Disposition	Terms & Conditions	Pay
1	VC21453(a)	Not Guilty - Court Entered Plea			\$623.00
Total Fines and Fees:					\$623.00

Programs & Probation

Settings, Hearings, & Orders

- The COURT TRIAL DATE is 03/26/2015 and the COURT TRIAL TIME is 1.30 p.m.. This case has been set for Court Trial by order of the Court. The Defendant must appear at the Court Trial.
 Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
 - Other/Orders: RULING ON MOTION: COURT DENIES MOTIONS

Trials & Motions

- MOTION TO STRIKE, VERIFIED COMPLAINT, REMOVAL OF COURT ENTERED PLEA; COURT DENIES ORAL 170.6 TO THE COURT: COURT DENIES AS UNTIMELY



Superior Court of California, County of Sonoma

Traffic Division - Room 109-J

600 Administration Drive
Santa Rosa, CA 95403-2878

TRAFFIC COURT MINUTES

Courtroom: 14 Date: 2/20/2015 Time: 10:30
Judicial Officer: WHEELDIN, ANTHONY Interpreter:
Clerk: Pat Graham Language:

Case Information

Case #: SRO1418580 Defendant: Russell, Derek Pay/Appear: 03/09/2015
DOB: 09/11/1967 Officer: Alan Rosenthal (367) DL #: C5969182
Citation Date: 12/02/2014 Address: 735 Pine St Santa Rosa, CA 95404

Appearances & Waivers

- Defendant Present

Fines & Fees

Cnt	Code	Plea	Disposition	Terms & Conditions	Pay
1	VC21453(a)	Not Guilty - Court Trial			\$623.00
Total Fines and Fees:					\$623.00

Programs & Probation

Settings, Hearings, & Orders

- The NEXT COURT DATE is 03/20/2015 and the COURT TIME is 10.30 a.m.. This case has been continued by order of the Court. The Defendant must appear at the next court date.
Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- The COURT TRIAL DATE is 03/26/2015 and the COURT TRIAL TIME is 1.30 p.m.. This case has been set for Court Trial by order of the Court. The Defendant must appear at the Court Trial.
Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- Other/Orders: RULING ON MOTION

Trials & Motions

- MOTION TO STRIKE, VERIFIED COMPLAINT, REMOVAL OF COURT ENTERED PLEA



Superior Court of California, County of Sonoma

Traffic Division - Room 109-J

600 Administration Drive

Santa Rosa, CA 95403-2878

TRAFFIC COURT MINUTES

Courtroom: 14 Date: 2/18/2015 Time: 10:30
 Judicial Officer: WHEELDIN, ANTHONY Interpreter:
 Clerk: Pat Graham Language:

Case Information

Case #: SRO1418580 Defendant: Russell, Derek Pay/Appear: 03/09/2015
 DOB: 09/11/1967 Officer: Alan Rosenthal (367) DL #: C5969182
 Citation Date: 12/02/2014 Address: 735 Pine St Santa Rosa, CA 95404

Appearances & Waivers

- Defendant Present
- Court advises Defendant of constitutional and statutory rights.
- Defendant does not waive time for court trial and the trial will be heard within 45 days. 45th Day: 04/03/2015

Fines & Fees

Cnt	Code	Plea	Disposition	Terms & Conditions	Pay
1	VC21453(a)	Not Guilty - Court Trial			\$623.00
Total Fines and Fees:					\$623.00

Programs & Probation

Settings, Hearings, & Orders

- The NEXT COURT DATE is 02/20/2015 and the COURT TIME is 10.30 a.m.. This case has been continued by order of the Court. The Defendant must appear at the next court date.
 Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- The COURT TRIAL DATE is 03/26/2015 and the COURT TRIAL TIME is 1.30 p.m.. This case has been set for Court Trial by order of the Court. The Defendant must appear at the Court Trial.
 Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- Other/Orders: FOR FILING OF MOTION

2015 FEB 20 AM 9:28

DEREK RUSSELL CO. D.A.
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

DEREK RUSSELL, an individual,

Defendant,

) Case No.: SRO1418580
) REMOVAL OF COURT ENTERED
) PLEA of February 18, 2015 in Dept 14
) by Judge Wheeldin per PC §1018 and
) enter of Demurrer per PC §1002-1008

) HEARING:
) Date: February 20, 2015
) Time: 10 am
) Dept: 14

DISTRICT ATTORNEY OF THE COUNTY OF SONOMA AND CLERK OF SUPERIOR COURT.

On February 20, 2015, Derek Russell, Defendant in error, is moving to remove the court entered plea entered on February 18, 2015 by Judge Wheeldin in Dept 14, pursuant to PC §1018. Defendant in Error never refused to plea, and the plea was entered erroneously by the Judge. Derek Russell will also do so in open court orally at his next appearance. Defendant in Error requires to demurrer per PC §1002-1012. This section shall be liberally construed to affect these objects and to promote justice.

Dated: February 20, 2015

DEREK RUSSELL, In pro per
Without Prejudice UCC 1-308

REMOVAL OF COURT ENTERED PLEA PC1018

Page 1

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2015 FEB 20 AM 9:28

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	)Case No.: SRO1418580
Plaintiff,)
vs.	)Notice of Dispute, Demand for
	)Verification/Validation of Alleged
	)Debt;
DEREK RUSSELL, an individual,	)DATE: February 20, 2015
Defendant,)
	)TIME: 10 am
)
	)DEPT: 14-TRAFFIC

I received the above citation and notice to appear from you that alleges your position as a debt collector and appeared in court February 18, 2015. Accordingly, my records reflect you are not, neither have you ever been a known *creditor* of mine, or one that I have conducted any consumer transactions with. Therefore your identity is unknown to me at this time, and you appear to not be a known party to any transaction that I recall. This requires further information and documentation from you to verify your status and

1 capacity. Therefore I am respectfully demanding verification and or validation of any alleged
2 debt pursuant to 15 USC§1692g, and California Rosenthal Act §1788 *et seq* respectively.

3 The California Highway Patrol and the Sonoma County Superior Court are "debt
4 collector" pursuant to 15 USC§1692a(6), and California Rosenthal Act §1788. DEREK
5 RUSSELL is a "consumer" as that term is defined in 15 USC§1692a(3). CALIFORNIA
6 HIGHWAY PATROL AND THE SONOMA COUNTY SUPERIOR COURT , is not a creditor,
7
8 and I have not applied for, neither received any services or credit with your particular
9 agency.
10

11
12 In light of the foregoing please provide a certified true alleged original genuine
13 executed contract/agreement that memorializes the transaction between you and I that
14 supports you're your alleged debt. If your debt collection firm is unable to provide a sufficient
15 legal basis for your demanding payment, I will bring suit against your agency for violations
16 of federal and state consumer protection laws without further notice. Therefore this notice
17 can be construed as a Notice of Intent to bring such action if your response does not
18 support a legal/legitimate debt "owed" to your agency. In concluding, you are required to
19 respond within five (5) business days to my requests, should you fail to timely respond, and
20 or proffer a non- response, a suit will be filed in the appropriate court.
21
22

23
24
25 Dated: February 20, 2015

26 _____
27 DEREK RUSSELL, In pro per
28 Without Prejudice UCC 1-308

RECEIVED

2015 FEB 20 AM 9:28

DEREK RUSSELL
 735 Pine Street
 Santa Rosa, California [95404]
 337-422-9200
 In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: SRO1418580
Plaintiff,	) REQUEST FOR VERIFIED
vs.	) COMPLAINT
	) PC 853.9, VC 40513 a&b,
DEREK RUSSELL, an individual,	) GC 100, 26500, 26501, 26502
	) C.C.P. 446
Defendant,	

Alleged Defendant herein, **DOES NOT PLEA**, and requests a verified complaint pursuant to the provisions of Penal Code 853.9 sub-paragraph (b), California Motor Vehicle Code 40513 (a) & (b), Government Code sections; 100, 26500, 26501 and 26502 respectively.

Government Code 26502 states: "The District attorney shall institute proceedings"

Defendant herein additionally request that said verified complaint be filed and signed by the people's representative in the above matter, (See: C.C.P. 446.) A California peace officer is not the people's representative as he or she is not licensed to practice law, nor, can he/she participate in discovery as the people's representative. Therefore, the signature on the "Notice to Appear" cannot constitute a verification nor constitute an accusatorial instrument within the due process requirements of the California Constitution of the 14th amendment to the United States constitution. Defendant herein demands due process and requests the court defend the constitutionally protected rights of the accused.

1
2 Dated: February 20, 2015

3
4 DEREK RUSSELL, In pro per
Without Prejudice UCC 1-308
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SONOMA CO. D.A.

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FEB 18 2015

SUPERIOR COURT OF CALIFOR:
COUNTY OF SONOMA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA) Case No.: SRO1418580
Plaintiff,)
vs.) NOTICE AND MOTION TO STRIKE
DEREK RUSSELL, an individual,) NOTICE TO APPEAR
Defendant,) DATE: February 18, 2015
TIME: 8:30 am
DEPT: 14-TRAFFIC

NOTICE IS HEREBY GIVEN that on date and time mentioned above at the Superior Court of California, County of Sonoma, Defendant DEREK RUSSELL [hereinafter "Defendant"] will Motion to Strike Plaintiff's Infraction on the following grounds:

1. The Infraction fails under the following Supreme Court Cases:
 - a. Right to Travel- *Shapiro v. Thompson*, 394 U.S. 618 (1969)
 - b. Standards for Police to Stop/Arrest- *Brown v. Texas*, 443 U.S. 47 (1979)
 - c. Right to Protect Liberty- *Murdock v. Pennsylvania*, 319 U.S. 105 (1943)
 - d. Right to Ignore with Impunity- *Schuttlesworth v Birmingham Alabama* 373 us 262
 - e. Willfull Intent-Evil- *U. S. v Bishop*, 412 U. S. 346 (1973)
 - f. Waivers of Constitutional Rights - *Brady v. U.S.*, 397 U.S. 742, 748
 - g. Malice may be inferred- *Pauley v. Hall* 335 N. W. 2d 197, 124 Mich App 255

ENDORSED
FILED

FEB 20 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: SRO1418580
Plaintiff,)
vs.	) NOTICE AND MOTION TO STRIKE
	) NOTICE TO APPEAR
DEREK RUSSELL, an individual,)
	) DATE: February 18, 2015
Defendant,)
	) TIME: 8:30 am
)
	) DEPT: 14-TRAFFIC

NOTICE IS HEREBY GIVEN that on date and time mentioned above at the Superior Court of California, County of Sonoma, Defendant DEREK RUSSELL [hereinafter "Defendant"] will Motion to Strike Plaintiff's Infraction on the following grounds:

1. The Infraction fails under the following Supreme Court Cases:
 - a. Right to Travel- *Shapiro v. Thompson*, 394 U.S. 618 (1969)
 - b. Standards for Police to Stop/Arrest- *Brown v. Texas*, 443 U.S. 47 (1979)
 - c. Right to Protect Liberty- *Murdock v. Pennsylvania*, 319 U.S. 105 (1943)
 - d. Right to Ignore with Impunity- *Schuttlesworth v Birmingham Alabama*, 373 us 262
 - e. Willfull Intent-Evil- *U. S. v Bishop*, 412 U. S. 346 (1973)
 - f. Waivers of Constitutional Rights - *Brady v. U.S.*, 397 U.S. 742, 748
 - g. Malice may be inferred- *Pauley v. Hall* 335 N. W. 2d 197, 124 Mich App 255

- h. Malicious prosecution- *Lopez v. Modisitt* 488 F. Supp 119 D. C. 1980.
- i. Seizure be "reasonable." Cf. *Terry v. Ohio*, 392 U. S. 1;
- j. Seizure specific, ojective facts-*United States v. Brignoni-Ponce*, 422 U. S. 873.
- k. Unlawful search and seizure-interpreted in favor of citizen-*Scheuer v. Rhodes* 416 U.S. 232, 1974, Expounds upon *Owen Byers v. U.S.* 273 U.S. 28
- l. Court protect encroachment of Constitutionally secured liberties – *Boyd v. U.S.* 116 U.S. 616
- m. Rights secured by Constitution-*Miranda v. Arizona*, 384 U.S. 436
- n. Law enforcement practice is judged-*Delaware v. Prouse*, 440 U.S. 648 (1979)
- o. Jurisdiction cannot be assumed *Maine v. Thiboutot*, 100 S. Ct. 250
- p. No Immunity Officers of Law-*Owen v. City of Independence*, 445 U.S. 622 (1980)
- q. Encroachment of rights-*Bryars v United States*, 273 U.S. 28 (1927)
- r. Supreme Law of Land-*Marbury v. Madison* 5 US.
- s. Unconstitutional act is not law-*Norton v. Shelby County* 118 US 425
- t. Unconstitutional statute-*16 Am Jur Vol. 2*, sec 177, 256.

I. STANDARD OF REVIEW FOR PRO SE PLEADINGS

1. Defendant admits to some technical missteps attributable to the learning curve. However, none of which is fatal to his claim as will be demonstrated below. The Defendant is proceeding without the benefit of legal counsel. Additionally, I am not a practicing attorney nor have I been trained in the complex study of law. As such, Defendant's pro se papers are to be construed liberally. See *Haines v. Kerner*, 404 U.S. 519-20, (1972). "A pro se litigant should be given a reasonable opportunity to remedy defects in his pleadings if the factual allegations are close to stating a claim for relief." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Accordingly such pleadings should be held to a less stringent standard than those drafted by licensed, practicing attorneys. *B. Platsky v. CIA*, 953 F.2d 25, 26 28 (2nd Cir. 1991), The Court is the Guardian of 'my' liberties and "Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings."

Dated: February 10, 2015.

DEREK RUSSELL

Defendant in Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant was unlawfully pulled over on December 2, 2014 and issued a Notice to Appear. Defendant did not know nor understand the court, jurisdiction, charges, and the Police Officer failed to properly inform Defendant whereby any contract achieved is null and void. In this judicial realm, rights of man are paramount and Supreme Court Rulings are trump. *Brady v. U.S.*, 397 U.S. 742, 748: "*Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness.*" "*If men, through fear, fraud, or mistake, should in terms renounce or give up any natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being a gift of ALMIGHTY GOD, it is not in the power of man to alienate this gift and voluntarily become a slave.*" —Samuel Adams, 1772

"A bill of attainder is defined to be 'a legislative Act which inflicts punishment without judicial trial'" "...where the legislative body exercises the office of judge, and assumes judicial magistracy, and pronounces on the guilt of a party without any of the forms or safeguards of a trial, and fixes the punishment."

The alleged determination of "commitment cost" and "Fine" for alleged traffic tickets or court costs, fees, or penalties requires execution as a "cloak to disguise a collateral undertaking" in U.S. Funds and is "malicious vexation by legal process" under the disguise/pretense of a "lawful" government to enforce the unwritten Master - Slave relationship.

1 "Although probable cause may not be inferred from malice, malice may be inferred from lack of
2 probable cause." *Pauley v. Hall* 335 N. W. 2d 197, 124 Mich App 255.

3
4 "Malice is a state of mind and an essential element of action for malicious prosecution and is
5 to be found by jury from case, and want of probable cause is the other element of action for
6 malicious prosecution which must be proved by plaintiff." *Lopez v. Modisitt* 488 F. Supp 119 D.
7 C. 1980.

8 9 II. MY RIGHT TO TRAVEL

10 I have a God given right to travel freely, secured and protected by the Constitution. I have a right
11 to travel freely and unencumbered, pursuant to *Shapiro v. Thompson*, 394 U.S. 618 (1969).

12 13 III. IMPROPER STOP, SEARCH AND SEIZURE

14 I was illegally and improperly stopped, Standards for Police to Stop/Arrest- **Brown v. Texas**,
15 **443 U.S. 47 (1979)**. The application of the Texas statute to detain appellant and require him to
16 identify himself violated the Fourth Amendment because the officers lacked any reasonable
17 suspicion to believe that appellant was engaged or had engaged in criminal conduct. Detaining
18 appellant to require him to identify himself constituted a seizure of his person subject to the
19 requirement of the Fourth Amendment that the seizure be "reasonable." *Cf. Terry v. Ohio*, 392 U.
20 S. 1; *United States v. Brignoni-Ponce*, 422 U. S. 873. The Fourth Amendment requires that such
21 a seizure be based on specific, objective facts indicating that society's legitimate interests require
22 such action, or that the seizure be carried out pursuant to a plan embodying explicit, neutral
23 limitations on the conduct of individual officers. *Scheuer v. Rhodes*, 416 U.S. 232, 1974:
24
25
26
27
28

1 *Expounds upon Owen Byers v. U.S., 273 U.S. 28 Unlawful search and seizure. Your rights must*
2 *be interpreted in favor of the citizen.*

3
4 *Boyd v. U.S., 116 U.S. 616: "The court is to protect against any encroachment of*
5 *Constitutionally secured liberties."*

6
7 *Miranda v. Arizona, 384 U.S. 436: "Where rights secured by the Constitution are involved, there*
8 *can be no rule making or legislation, which would abrogate them."*

9
10 **Delaware v. Prouse, 440 U.S. 648 (1979)** Except where there is at least articulable and
11 reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that
12 either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an
13 automobile and detaining the driver in order to check his driver's license and the registration of
14 the automobile are unreasonable under the Fourth Amendment. Pp. 440 U. S. 653-663. (a)
15 Stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of
16 the Fourth and Fourteenth Amendments, even though the purpose of the stop is limited and the
17 resulting detention quite brief. The permissibility of a particular law enforcement practice is
18 judged by balancing its intrusion on the individual's Fourth Amendment interests against its
19 promotion of legitimate governmental interests. Pp. 440 U. S. 653-655.
20
21

22
23 **IV. CAN A STATE CONVERT MY RIGHTS INTO A PRIVILEGE?**

24
25 Can a state arbitrarily and erroneously convert MY right into a privilege and issue a license
26 and a fee for it? Of course not. *Murdock v. Penn., 319 US 105: "No state shall convert a*
27 *liberty into a privilege, license it, and attach a fee to it."*

1 **V. IF THE STATE DOES, I CAN ENGAGE IN THE RIGHT WITH IMPUNITY**

2 *Shuttlesworth v. Birmingham*, 373 US 262: "If the state converts a liberty into a privilege,
3 *the citizen can engage in the right with impunity."* *Shuttlesworth v Birm.* Said that if the state
4 does convert your right into a privilege and charge a license and a fee for it you can ignore the
5 license and fee, and engage in the right with impunity. That means they can't punish me...they
6 have to let me go.

7
8 **VI. I DID NOT HAVE WILFULL INTENT. MENS REA**

9
10 *U. S. v Bishop*, 412 U. S. 346 (1973)...Basically what Bishop does is it sets a standard for
11 what constitutes a criminal violation in terms of willful intent. Willfulness is one of the elements
12 which is required to be proven. In any criminal element you have to prove that 1. You are the
13 party, 2. That you had a method or opportunity to do a thing, and 3. That you did so with a
14 willful intent. Now, when we get to willful intent, willful is defined as an evil motive or intent
15 to avoid a known duty or task under the law with immoral uncertainty. Obviously I have decided
16 that I have relied on the United States Constitution, and I have relied on the decisions of the
17 supreme court (THE OPINIONS OF THE NINE MEN IN THE BLACK ROBES-TRUMP). So
18 could I have willfully done any deed or crime? Obviously not. So this case stipulates that I have
19 a perfect defense for the element of willfulness. Since the burden on the prosecution is to prove
20 that I did willfully and knowingly avoid a known duty or task under the law with immoral
21 certainty he cannot perform that task, because I obviously have MY constitutional immunity to
22 that. "If you've relied on prior decisions of the Supreme Court you have a perfect defense for
23 willfulness." *U.S. v. Bishop*, 412 U.S. 346
24
25
26
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28

VII. CONCLUSION

I have God given rights, secured and protected by the Constitution of the United States and the State of California. It's very important that you understand first, the constitution is the supreme law of the land and that I have that right, and that right shall not be infringed, and it's supposed to be enforced in favor of me, the clearly intended and expressly designated beneficiary. Since the burden on the prosecution is to prove that I did willfully and knowingly avoid a known duty or task under the law with immoral certainty he cannot perform that task, because I obviously have my constitutional immunity to that. The State cannot compel me to have a license or pay a fee for the exercise of your right. And if they do, I can ignore the license and engage the right with impunity. And since I have a perfect defense for the element of willfulness, the State cannot punish me. The Court should dismiss, as the People don't have a cause of action. *"Jurisdiction, once challenged, cannot be assumed and must be decided."* *Maine v. Thiboutot*, 100 S. Ct. 250.

"The law requires PROOF OF JURISDICTION to appear on the Record of the administrative agency and all administrative proceedings." *Hagans v. Lavine*, 415 U.S. 533 (1974) "If any tribunal (court) finds absence of proof of jurisdiction over person and subject matter, the case must be dismissed." *Louisville RR v. Motley*, 211 U.S. 149, 29 S Ct. 42 (1908) "Where there is no jurisdiction there is no judge; the proceeding is as nothing. Such has been law from the days of the Marshalsea." 10 Coke 68; also *Bradley v. Fisher*, 13 Wall 335, 351. *"Manning v. Ketcham*, 58 F 2d 948.

IX. NO IMMUNITY

Now that this Court is informed of the above rights and Supreme Court Opinions, if the Plaintiff continues, it does so at its own risk. You will not be able to say "Well, we acted in

1 good faith...We had good faith reliance that you broke the law...And that means you can't sue
2 us. That's a lie. Since these two cases, *Owen v. City Of Independence* , 445 U.S. 622 (1980)
3 and *Maine v Thiboutot*, 448 U.S.1 (1980).

4
5 Basically what these two cases say "Where plain language of a statute supported by
6 consistent judicial interpretation is strong, it is not necessary to look beyond the words of the
7 statute."
8

9
10 "The right of action created by statute relating to deprivation under color of state law of a
11 right secured by the constitution and the laws of the United States encompasses claims which are
12 solely based on statutory violations of federal law, and applied to the claim that claimants had
13 been deprived of their rights in some capacity, to which they were entitled.
14

15 They claimed that they acted in "good faith". The Supreme Court said "*You are deemed*
16 *to be officers of the law; you are to advise us of the law; you can hardly claim that you in good*
17 *faith for willful deprivation of the law, and you certainly can't claim ignorance of the law,*
18 *because a citizen out here on the street can't claim ignorance of the law. It makes the law look*
19 *stupid if an officer of the court or some officer of government doesn't know the law and then they*
20 *go ahead and abuse somebody's constitutional rights.*"
21

22 So in matters of constitutional rights both these cases uphold one point: Whenever they
23 violate your constitutional rights they do so at their own peril. It even says that at *Title 18 Sec*
24 *241, 242*. It says that upon conviction you are subject to a \$10,000 fine, 10 years in jail, or both,
25 and if death results life in prison. They're telling you "Don't violate somebody's rights".
26
27

Judge, you are deemed to know the law and swear to uphold it. You can hardly claim that you acted in good faith for willful deprivation of the law and you certainly can't claim ignorance of the law for that would make the law look stupid for a knowledgeable judge to claim ignorance of the law when a citizen on the street can't claim ignorance of the law.

CONSTRUED IN MY FAVOR

The reality here is what they are setting is the standards must be liberally construed in favor of the citizen. ***It's the duty of the court to make sure that happens.*** So now, you have a right to be wrong, you have a right to enter your viable defenses that you honestly think, no state can turn that right into a privilege and issue a license and a fee, and if they do you can ignore the license and fee. They must prove the burden of proof of willfulness which they cannot do. If they do violate your rights you do have a right to sue them ***Owens v City of Independence and Maine v Thiboutot***, They have to give every consideration to you, and that's the way it is.

1 The next case I want to talk about is *Boyd v United States*, 116 US 616: The court is to
2 protect against encroachment of constitutionality or security liberty. It is equivalent to a
3 compulsory production of papers to make the non-production of them a confession of the
4 allegations, which is pretended they will prove, and a lot of times that will happen in federal
5 cases.

6
7 All laws which are repugnant to the constitution are null and void. *Marbury v. Madison*
8 5 US.

9 Where rights secured by the constitution are involved, there can be no rule or law
10 making legislation which would abrogate abolish them. *Miranda v. Arizona*, 384 U.S. 436.

11 An unconstitutional act is not law. It confers no rights, it imposes no duties, it affords no
12 protections, it creates no office, it is in legal contemplation as inoperative as though it had never
13 been passed *Norton v Shelby County* 118 US 425.

14 The general rule is that an unconstitutional statute though having the form and name of
15 law in in reality no law, but is totally void. *16 Am Jur Vol. 2, sec 177, 256.*

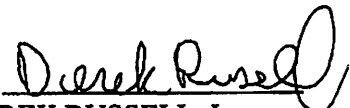
16 17 18 **VIII. PRAYER**

19 1. Since the Plaintiff (THE PEOPLE OF THE STATE OF CALIFORNIA) does not have a
20 cause of action for which relief can be granted, counsel (STATE PROSECUTOR) is specifically
21 precluded from performing his major task, therefore your honor, would it please the court at this
22 time I would motion most graciously for dismissal with prejudice for failure to state a cause of
23 action for which relief may be granted by this honorable court,

24 2. I require this Court to STRIKE THE NOTICE TO APPEAR, all related fee's, and to notify
25 the DMV of this and to dismiss any Warrant (if any). To not do so would cause Defendant
26 unrecoverable harm, physical and emotional stress.

27 3. I require this Court to submit Findings of Fact and Conclusions of Law if this
28 NOTICE TO APPEAR is not stricken.

1 Dated: February 10, 2015

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4 DEREK RUSSELL, In pro per
5 Without Prejudice UCC 1-308
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DEREK RUSSELL
 735 Pine Street
 Santa Rosa, California [95404]
 337-422-9200
 In Pro Per

ENDORSED
 FILED
 FEB 20 2015
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SONOMA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: SRO1418580 ✓
Plaintiff,	) REQUEST FOR VERIFIED
vs.	) COMPLAINT
DEREK RUSSELL, an individual,	) PC 853.9, VC 40513 a&b,
Defendant,	) GC 100, 26500, 26501, 26502
	) C.C.P. 446

Alleged Defendant herein, **DOES NOT PLEA**, and requests a verified complaint pursuant to the provisions of Penal Code 853.9 sub-paragraph (b), California Motor Vehicle Code 40513 (a) & (b), Government Code sections; 100, 26500, 26501 and 26502 respectively.

Government Code 26502 states: "The District attorney shall institute proceedings"

Defendant herein additionally request that said verified complaint be filed and signed by the people's representative in the above matter, (See: C.C.P. 446.) A California peace officer is not the people's representative as he or she is not licensed to practice law, nor, can he/she participate in discovery as the people's representative. Therefore, the signature on the "Notice to Appear" cannot constitute a verification nor constitute an accusatorial instrument within the due process requirements of the California Constitution of the 14th amendment to the United States constitution. Defendant herein demands due process and requests the court defend the constitutionally protected rights of the accused.

1
2 Dated: February 20, 2015

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4 DEREK RUSSELL, In pro per
Without Prejudice UCC 1-308
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Superior Court of California, County of Sonoma

Traffic Division - Room 109-J

600 Administration Drive
Santa Rosa, CA 95403-2878

TRAFFIC COURT MINUTES

Courtroom: 14 Date: 3/20/2015 Time: 10:30
Judicial Officer: WHEELDIN, ANTHONY Interpreter:
Clerk: Pat Graham Language:

Case Information

Case #: CHP84976TQ Defendant: Russell, Derek Pay/Appear:
DOB: 09/11/1967 Officer: Wayne Bernard (13838) DL #: C5969182
Citation Date: 09/24/2014 Address: 3580 Green Hill Dr Santa Rosa, CA 95404

Appearances & Waivers

- Defendant Present

Fines & Fees

Cnt	Code	Plea	Disposition	Terms & Conditions	Pay
1	VC21703	Not Guilty - Court Entered Plea			\$371.00
2	VC12951(a)	Not Guilty - Court Entered Plea			\$238.00
Total Fines and Fees:					\$609.00

Programs & Probation

Settings, Hearings, & Orders

- The COURT TRIAL DATE is 03/26/2015 and the COURT TRIAL TIME is 1.30 p.m.. This case has been set for Court Trial by order of the Court. The Defendant must appear at the Court Trial.
Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- Other/Orders: RULING ON MOTIONS, COURT DENIES MOTIONS

Trials & Motions

- MOTION TO STRICK, REMOVAL OF COURT ENTERED PLEA, VERIFIED COMPLAINT : COURT DENIES MOTIONS: ORAL MOTION 170.6 TO THIS COURT; COURT DENIES MOTION



Superior Court of California, County of Sonoma

Traffic Division - Room 109-J

600 Administration Drive
Santa Rosa, CA 95403-2878

TRAFFIC COURT MINUTES

Courtroom: 14 Date: 2/20/2015 Time: 10:30
Judicial Officer: WHEELDIN, ANTHONY Interpreter:
Clerk: Pat Graham Language:

Case Information

Case #: CHP84976TQ Defendant: Russell, Derek Pay/Appear: 02/25/2015
DOB: 09/11/1967 Officer: Wayne Bernard (13838) DL #: C5969182
Citation Date: 09/24/2014 Address: 3580 Green Hill Dr Santa Rosa, CA 95404

Appearances & Waivers

- Defendant Present

Fines & Fees

Cnt	Code	Plea	Disposition	Terms & Conditions	Pay
1	VC21703	Not Guilty - Court Trial			\$371.00
2	VC12951(a)	Not Guilty - Court Trial			\$238.00
Total Fines and Fees:					\$609.00

Programs & Probation

Settings, Hearings, & Orders

- The NEXT COURT DATE is 03/20/2015 and the COURT TIME is 10.30 a.m.. This case has been continued by order of the Court. The Defendant must appear at the next court date.
Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- The COURT TRIAL DATE is 03/26/2015 and the COURT TRIAL TIME is 1.30 p.m.. This case has been set for Court Trial by order of the Court. The Defendant must appear at the Court Trial.
Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- Other/Orders: RULING ON MOTIONS

Trials & Motions

- MOTION TO STRICK, REMOVAL OF COURT ENTERED PLEA, VERIFIED COMPLAINT



Superior Court of California, County of Sonoma

Traffic Division - Room 109-J

600 Administration Drive

Santa Rosa, CA 95403-2878

TRAFFIC COURT MINUTES

Courtroom: 14 Date: 2/18/2015 Time: 10:30
 Judicial Officer: WHEELDIN, ANTHONY Interpreter:
 Clerk: Pat Graham Language:

Case Information

Case #: CHP84976TQ Defendant: Russell, Derek Pay/Appear: 02/25/2015
 DOB: 09/11/1967 Officer: Wayne Bernard (13838) DL #: C5969182
 Citation Date: 09/24/2014 Address: 3580 Green Hill Dr Santa Rosa, CA 95404

Appearances & Waivers

- Defendant Present
- Defendant does not waive time for court trial and the trial will be heard within 45 days. 45th Day: 04/03/2015

Fines & Fees

Cnt	Code	Plea	Disposition	Terms & Conditions	Pay
1	VC21703	Not Guilty - Court Trial			\$371.00
2	VC12951(a)				\$238.00
Total Fines and Fees:					\$609.00

Programs & Probation

Settings, Hearings, & Orders

- The NEXT COURT DATE is 02/20/2015 and the COURT TIME is 10.30 a.m.. This case has been continued by order of the Court. The Defendant must appear at the next court date.
- Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- The COURT TRIAL DATE is 03/26/2015 and the COURT TRIAL TIME is 1.30 p.m.. This case has been set for Court Trial by order of the Court. The Defendant must appear at the Court Trial.
- Willful failure to appear may result in an additional Failure to Appear charge and an additional civil assessment fee.
- Other/Orders: FILING OF MOTION

RECEIVED
2015 FEB 20 AM 9:28

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: CHP84976TQ
Plaintiff,	) REQUEST FOR VERIFIED
vs.	) COMPLAINT
DEREK RUSSELL, an individual,	) PC 853.9, VC 40513 a&b,
Defendant,	) GC 100, 26500, 26501, 26502
	) C.C.P. 446

Alleged Defendant herein, **DOES NOT PLEA**, and requests a verified complaint pursuant to the provisions of Penal Code 853.9 sub-paragraph (b), California Motor Vehicle Code 40513 (a) & (b), Government Code sections; 100, 26500, 26501 and 26502 respectively.

Government Code 26502 states: "The District attorney shall institute proceedings"

Defendant herein additionally request that said verified complaint be filed and signed by the people's representative in the above matter, (See: C.C.P. 446.) A California peace officer is not the people's representative as he or she is not licensed to practice law, nor, can he/she participate in discovery as the people's representative. Therefore, the signature on the "Notice to Appear" cannot constitute a verification nor constitute an accusatorial instrument within the due process requirements of the California Constitution of the 14th amendment to the United States constitution. Defendant herein demands due process and requests the court defend the constitutionally protected rights of the accused.

1 Dated: February 20, 2015

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3 DEREK RUSSELL, In pro per
4 Without Prejudice UCC 1-308
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RECEIVED

2015 FEB 20 AM 9:28

DEREK RUSSELL
 735 Pine Street SONOMA CO. D.A.
 Santa Rosa, California [95404]
 337-422-9200
 In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: CHP84976TQ
Plaintiff,)
vs.	) Notice of Dispute, Demand for
	) Verification/Validation of Alleged
	) Debt;
DEREK RUSSELL, an individual,	) DATE: February 20, 2015
Defendant,)
	) TIME: 10 am
)
	) DEPT: 14-TRAFFIC

I received the above citation and notice to appear from you that alleges your position as a debt collector and appeared in court February 18, 2015. Accordingly, my records reflect you are not, neither have you ever been a known *creditor* of mine, or one that I have conducted any consumer transactions with. Therefore your identity is unknown to me at this time, and you appear to not be a known party to any transaction that I recall. This requires further information and documentation from you to verify your status and

1 capacity. Therefore I am respectfully demanding verification and or validation of any alleged
2 debt pursuant to 15 USC§1692g, and California Rosenthal Act §1788 *et seq* respectively.

3 The California Highway Patrol and the Sonoma County Superior Court are "debt
4 collector" pursuant to 15 USC§1692a(6), and California Rosenthal Act §1788. DEREK
5 RUSSELL is a "consumer" as that term is defined in 15 USC§1692a(3). CALIFORNIA
6 HIGHWAY PATROL AND THE SONOMA COUNTY SUPERIOR COURT , is not a creditor,
7
8 and I have not applied for, neither received any services or credit with your particular
9 agency.
10

11
12 In light of the foregoing please provide a certified true alleged original genuine
13 executed contract/agreement that memorializes the transaction between you and I that
14 supports you're your alleged debt. If your debt collection firm is unable to provide a sufficient
15 legal basis for your demanding payment, I will bring suit against your agency for violations
16 of federal and state consumer protection laws without further notice. Therefore this notice
17 can be construed as a Notice of Intent to bring such action if your response does not
18 support a legal/legitimate debt "owed" to your agency. In concluding, you are required to
19 respond within five (5) business days to my requests, should you fail to timely respond, and
20 or proffer a non- response, a suit will be filed in the appropriate court.
21
22

23
24
25 Dated: February 20, 2015

26 _____
27 DEREK RUSSELL, In pro per
28 Without Prejudice UCC 1-308

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

RECEIVED
2015 FEB 18 PM 1:43
SONOMA CO. D.A.
RECEIVED
FEB 18 2015
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: CHP84976TQ
Plaintiff,)
	) NOTICE AND MOTION TO STRIKE
vs.	) NOTICE TO APPEAR
)
DEREK RUSSELL, an individual,	) DATE: February 18, 2015
)
Defendant,	) TIME: 8:30 am
)
	) DEPT: 14-TRAFFIC

NOTICE IS HEREBY GIVEN that on date and time mentioned above at the Superior Court of California, County of Sonoma, Defendant DEREK RUSSELL [hereinafter "Defendant"] will Motion to Strike Plaintiff's Infraction on the following grounds:

1. The Infraction fails under the following Supreme Court Cases:
 - a. Right to Travel- *Shapiro v. Thompson*, 394 U.S. 618 (1969)
 - b. Standards for Police to Stop/Arrest- *Brown v. Texas*, 443 U.S. 47 (1979)
 - c. Right to Protect Liberty- *Murdock v. Pennsylvania*, 319 U.S. 105 (1943)
 - d. Right to Ignore with Impunity- *Schuttlesworth v Birmingham Alabama*, 373 us 262
 - e. Willfull Intent-Evil- *U. S. v Bishop*, 412 U. S. 346 (1973)
 - f. Waivers of Constitutional Rights - *Brady v. U.S.*, 397 U.S. 742, 748
 - g. Malice may be inferred- *Pauley v. Hall* 335 N. W. 2d 197, 124 Mich App 255

ENDORSED
FILED

FEB 20 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA

Plaintiff,

vs.

DEREK RUSSELL, an individual,

Defendant,

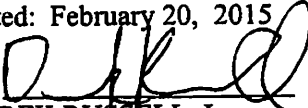
) Case No.: CHP84976TQ
) REMOVAL OF COURT ENTERED
) PLEA of February 18, 2015 in Dept 14
) by Judge Wheeldin per PC §1018 and
) enter of Demurrer per PC §1002-1008

) HEARING:
) Date: February 20, 2015
) Time: 10 am
) Dept: 14

DISTRICT ATTORNEY OF THE COUNTY OF SONOMA AND CLERK OF SUPERIOR COURT.

On February 20, 2015, Derek Russell, Defendant in error, is moving to remove the court entered plea entered on February 18, 2015 by Judge Wheeldin in Dept 14, pursuant to PC §1018. Defendant in Error never refused to plea, and the plea was entered erroneously by the Judge. Derek Russell will also do so in open court orally at his next appearance. Defendant in Error requires to demurrer per PC §1002-1012. This section shall be liberally construed to affect these objects and to promote justice.

Dated: February 20, 2015


DEREK RUSSELL, In pro per
Without Prejudice UCC 1-308

REMOVAL OF COURT ENTERED PLEA PC1018

Page 1

ENDORSED
FILED

FEB 20 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: CHP84976TQ
Plaintiff,)
vs.	) NOTICE AND MOTION TO STRIKE
	) NOTICE TO APPEAR
DEREK RUSSELL, an individual,)
Defendant,	) DATE: February 18, 2015
)
	) TIME: 8:30 am
)
	) DEPT: 14-TRAFFIC

NOTICE IS HEREBY GIVEN that on date and time mentioned above at the Superior Court of California, County of Sonoma, Defendant DEREK RUSSELL [hereinafter "Defendant"] will Motion to Strike Plaintiff's Infraction on the following grounds:

1. The Infraction fails under the following Supreme Court Cases:
 - a. Right to Travel- *Shapiro v. Thompson*, 394 U.S. 618 (1969)
 - b. Standards for Police to Stop/Arrest- *Brown v. Texas*, 443 U.S. 47 (1979)
 - c. Right to Protect Liberty- *Murdock v. Pennsylvania*, 319 U.S. 105 (1943)
 - d. Right to Ignore with Impunity- *Schuttlesworth v Birmingham Alabama*, 373 us 262
 - e. Willfull Intent-Evil- *U. S. v Bishop*, 412 U. S. 346 (1973)
 - f. Waivers of Constitutional Rights - *Brady v. U.S.*, 397 U.S. 742, 748
 - g. Malice may be inferred- *Pauley v. Hall* 335 N. W. 2d 197, 124 Mich App 255

- h. Malicious prosecution- *Lopez v. Modisitt* 488 F. Supp 119 D. C. 1980.
- i. Seizure be "reasonable." Cf. *Terry v. Ohio*, 392 U. S. 1;
- j. Seizure specific, ojective facts-*United States v. Brignoni-Ponce*, 422 U. S. 873.
- k. Unlawful search and seizure-interpreted in favor of citizen-*Scheuer v. Rhodes* 416 U.S. 232, 1974, Expounds upon *Owen Byers v. U.S.* 273 U.S. 28
- l. Court protect encroachment of Constitutionally secured liberties – *Boyd v. U.S.* 116 U.S. 616
- m. Rights secured by Constitution-*Miranda v. Arizona*, 384 U.S. 436
- n. Law enforcement practice is judged-*Delaware v. Prouse*, 440 U.S. 648 (1979)
- o. Jurisdiction cannot be assumed *Maine v. Thiboutot*, 100 S. Ct. 250
- p. No Immunity Officers of Law-*Owen v. City of Independence*, 445 U.S. 622 (1980)
- q. Encroachment of rights-*Bryars v United States*, 273 U.S. 28 (1927)
- r. Supreme Law of Land-*Marbury v. Madison* 5 US.
- s. Unconstitutional act is not law-*Norton v. Shelby County* 118 US 425
- t. Unconstitutional statute-*16 Am Jur Vol. 2*, sec 177, 256.

I. STANDARD OF REVIEW FOR PRO SE PLEADINGS

1. Defendant admits to some technical missteps attributable to the learning curve. However, none of which is fatal to his claim as will be demonstrated below. The Defendant is proceeding without the benefit of legal counsel. Additionally, I am not a practicing attorney nor have I been trained in the complex study of law. As such, Defendant's pro se papers are to be construed liberally. See *Haines v. Kerner*, 404 U.S. 519-20, (1972). "A pro se litigant should be given a reasonable opportunity to remedy defects in his pleadings if the factual allegations are close to stating a claim for relief." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). Accordingly such pleadings should be held to a less stringent standard than those drafted by licensed, practicing attorneys. *B.Platsky v. CIA*, 953 F.2d 25, 26 28 (2nd Cir. 1991), The Court is the Guardian of 'my' liberties and "Court errs if court dismisses pro se litigant without instruction of how pleadings are deficient and how to repair pleadings."

Dated: February 10, 2015.

DEREK RUSSELL

Defendant in Pro Per

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant was unlawfully pulled over on September 24, 2014 and issued a Notice to Appear. Defendant did not know nor understand the court, jurisdiction, charges, and the Police Officer failed to properly inform Defendant whereby any contract achieved is null and void. In this judicial realm, rights of man are paramount and Supreme Court Rulings are trump. *Brady v. U.S.*, 397 U.S. 742, 748: "*Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness.*" "*If men, through fear, fraud, or mistake, should in terms renounce or give up any natural right, the eternal law of reason and the grand end of society would absolutely vacate such renunciation. The right to freedom being a gift of ALMIGHTY GOD, it is not in the power of man to alienate this gift and voluntarily become a slave.*" —Samuel Adams, 1772

"A bill of attainder is defined to be 'a legislative Act which inflicts punishment without judicial trial'" "...where the legislative body exercises the office of judge, and assumes judicial magistracy, and pronounces on the guilt of a party without any of the forms or safeguards of a trial, and fixes the punishment."

The alleged determination of "commitment cost" and "Fine" for alleged traffic tickets or court costs, fees, or penalties requires execution as a "cloak to disguise a collateral undertaking" in U.S. Funds and is "malicious vexation by legal process" under the disguise/pretense of a "lawful" government to enforce the unwritten Master - Slave relationship.

1 "Although probable cause may not be inferred from malice, malice may be inferred from lack of
2 probable cause." *Pauley v. Hall* 335 N. W. 2d 197, 124 Mich App 255.

3
4 "Malice is a state of mind and an essential element of action for malicious prosecution and is
5 to be found by jury from case, and want of probable cause is the other element of action for
6 malicious prosecution which must be proved by plaintiff." *Lopez v. Modisitt* 488 F. Supp 119 D.
7 C. 1980.

8 9 II. MY RIGHT TO TRAVEL

10 I have a God given right to travel freely, secured and protected by the Constitution. I have a right
11 to travel freely and unencumbered, pursuant to *Shapiro v. Thompson*, 394 U.S. 618 (1969).

12 13 III. IMPROPER STOP, SEARCH AND SEIZURE

14 I was illegally and improperly stopped, Standards for Police to Stop/Arrest- *Brown v. Texas*,
15 443 U.S. 47 (1979). The application of the Texas statute to detain appellant and require him to
16 identify himself violated the Fourth Amendment because the officers lacked any reasonable
17 suspicion to believe that appellant was engaged or had engaged in criminal conduct. Detaining
18 appellant to require him to identify himself constituted a seizure of his person subject to the
19 requirement of the Fourth Amendment that the seizure be "reasonable." *Cf. Terry v. Ohio*, 392 U.
20 S. 1; *United States v. Brignoni-Ponce*, 422 U. S. 873. The Fourth Amendment requires that such
21 a seizure be based on specific, objective facts indicating that society's legitimate interests require
22 such action, or that the seizure be carried out pursuant to a plan embodying explicit, neutral
23 limitations on the conduct of individual officers. *Scheuer v. Rhodes*, 416 U.S. 232, 1974:
24
25
26
27

1 *Expounds upon Owen Byers v. U.S., 273 U.S. 28 Unlawful search and seizure. Your rights must*
2 *be interpreted in favor of the citizen.*

3
4 *Boyd v. U.S., 116 U.S. 616: "The court is to protect against any encroachment of*
5 *Constitutionally secured liberties."*

6
7 *Miranda v. Arizona, 384 U.S. 436: "Where rights secured by the Constitution are involved, there*
8 *can be no rule making or legislation, which would abrogate them."*

9
10 **Delaware v. Prouse, 440 U.S. 648 (1979)** Except where there is at least articulable and
11 reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that
12 either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an
13 automobile and detaining the driver in order to check his driver's license and the registration of
14 the automobile are unreasonable under the Fourth Amendment. Pp. 440 U. S. 653-663. (a)
15 Stopping an automobile and detaining its occupants constitute a "seizure" within the meaning of
16 the Fourth and Fourteenth Amendments, even though the purpose of the stop is limited and the
17 resulting detention quite brief. The permissibility of a particular law enforcement practice is
18 judged by balancing its intrusion on the individual's Fourth Amendment interests against its
19 promotion of legitimate governmental interests. Pp. 440 U. S. 653-655.
20
21

22
23 **IV. CAN A STATE CONVERT MY RIGHTS INTO A PRIVILEGE?**

24
25 Can a state arbitrarily and erroneously convert MY right into a privilege and issue a license
26 and a fee for it? Of course not. *Murdock v. Penn., 319 US 105: "No state shall convert a*
27 *liberty into a privilege, license it, and attach a fee to it."*

1 **V. IF THE STATE DOES, I CAN ENGAGE IN THE RIGHT WITH IMPUNITY**

2 *Shuttlesworth v. Birmingham*, 373 US 262: "If the state converts a liberty into a privilege,
3 *the citizen can engage in the right with impunity.*" *Shuttlesworth v Birm.* Said that if the state
4 does convert your right into a privilege and charge a license and a fee for it you can ignore the
5 license and fee, and engage in the right with impunity. That means they can't punish me...they
6 have to let me go.

7
8 **VI. I DID NOT HAVE WILFULL INTENT. MENS REA**

9
10 *U. S. v Bishop*, 412 U. S. 346 (1973)...Basically what Bishop does is it sets a standard for
11 what constitutes a criminal violation in terms of willful intent. Willfulness is one of the elements
12 which is required to be proven. In any criminal element you have to prove that 1. You are the
13 party, 2. That you had a method or opportunity to do a thing, and 3. That you did so with a
14 willful intent. Now, when we get to willful intent, willful is defined as an evil motive or intent
15 to avoid a known duty or task under the law with immoral uncertainty. Obviously I have decided
16 that I have relied on the United States Constitution, and I have relied on the decisions of the
17 supreme court (THE OPINIONS OF THE NINE MEN IN THE BLACK ROBES-TRUMP). So
18 could I have willfully done any deed or crime? Obviously not. So this case stipulates that I have
19 a perfect defense for the element of willfulness. Since the burden on the prosecution is to prove
20 that I did willfully and knowingly avoid a known duty or task under the law with immoral
21 certainty he cannot perform that task, because I obviously have MY constitutional immunity to
22 that. "If you've relied on prior decisions of the Supreme Court you have a perfect defense for
23 willfulness." *U.S. v. Bishop*, 412 U.S. 346
24
25
26
27

VII. CONCLUSION

I have God given rights, secured and protected by the Constitution of the United States and the State of California. It's very important that you understand first, the constitution is the supreme law of the land and that I have that right, and that right shall not be infringed, and it's supposed to be enforced in favor of me, the clearly intended and expressly designated beneficiary. Since the burden on the prosecution is to prove that I did willfully and knowingly avoid a known duty or task under the law with immoral certainty he cannot perform that task, because I obviously have my constitutional immunity to that. The State cannot compel me to have a license or pay a fee for the exercise of your right. And if they do, I can ignore the license and engage the right with impunity. And since I have a perfect defense for the element of willfulness, the State cannot punish me. The Court should dismiss, as the People don't have a cause of action. *"Jurisdiction, once challenged, cannot be assumed and must be decided." Maine v. Thiboutot, 100 S. Ct. 250.*

"The law requires PROOF OF JURISDICTION to appear on the Record of the administrative agency and all administrative proceedings." *Hagans v. Lavine, 415 U.S. 533 (1974)* "If any tribunal (court) finds absence of proof of jurisdiction over person and subject matter, the case must be dismissed." *Louisville RR v. Motley, 211 U.S. 149, 29 S Ct. 42 (1908)* "Where there is no jurisdiction there is no judge; the proceeding is as nothing. Such has been law from the days of the Marshalsea." *10 Coke 68; also Bradley v. Fisher, 13 Wall 335, 351. "Manning v. Ketcham, 58 F 2d 948.*

IX. NO IMMUNITY

Now that this Court is informed of the above rights and Supreme Court Opinions, if the Plaintiff continues, it does so at its own risk. You will not be able to say "Well, we acted in

1 good faith...We had good faith reliance that you broke the law...And that means you can't sue
2 us. That's a lie. Since these two cases, *Owen v. City Of Independence* , 445 U.S. 622 (1980)
3 and *Maine v Thiboutot*, 448 U.S.1 (1980).

4
5 Basically what these two cases say "Where plain language of a statute supported by
6 consistent judicial interpretation is strong, it is not necessary to look beyond the words of the
7 statute."
8

9
10 "The right of action created by statute relating to deprivation under color of state law of a
11 right secured by the constitution and the laws of the United States encompasses claims which are
12 solely based on statutory violations of federal law, and applied to the claim that claimants had
13 been deprived of their rights in some capacity, to which they were entitled.
14

15 They claimed that they acted in "good faith". The Supreme Court said "*You are deemed*
16 *to be officers of the law; you are to advise us of the law; you can hardly claim that you in good*
17 *faith for willful deprivation of the law, and you certainly can't claim ignorance of the law,*
18 *because a citizen out here on the street can't claim ignorance of the law. It makes the law look*
19 *stupid if an officer of the court or some officer of government doesn't know the law and then they*
20 *go ahead and abuse somebody's constitutional rights.*"
21

22 So in matters of constitutional rights both these cases uphold one point: Whenever they
23 violate your constitutional rights they do so at their own peril. It even says that at *Title 18 Sec*
24 *241, 242*. It says that upon conviction you are subject to a \$10,000 fine, 10 years in jail, or both,
25 and if death results life in prison. They're telling you "Don't violate somebody's rights".
26
27

1 *Title 42 USC sec. 1983, 1985, & 1986* clearly establish your right to sue anybody that
2 does that. Now they're going to claim that you can't sue them, because they have judicial
3 immunity. Well, guess what? These two cases remove judicial immunity. There is no judicial
4 immunity for violating someone's rights.

5 *Judge, you are deemed to know the law and swear to uphold it. You can hardly claim*
6 *that you acted in good faith for willful deprivation of the law and you certainly can't claim*
7 *ignorance of the law for that would make the law look stupid for a knowledgeable judge to claim*
8 *ignorance of the law when a citizen on the street can't claim ignorance of the law.*

9
10 Therefore there is no judicial immunity. These cases have been on the books since 1982.

11 **CONSTRUED IN MY FAVOR**

12
13 The next case I want to talk about is *Bryars v United States*, 273 U. S. 28 (1927). This
14 is a search and seizure case which sets constitutional standards which Constitutional provisions
15 for the security of a person and property are to be liberally construed, and it is the duty of the
16 court to be watchful for the constitutional rights of the citizen, and against any stealthy
17 encroachment therein.

18
19 The reality here is what they are setting is the standards must be liberally construed in
20 favor of the citizen. *It's the duty of the court to make sure that happens.* So now, you have a
21 right to be wrong, you have a right to enter your viable defenses that you honestly think, no
22 state can turn that right into a privilege and issue a license and a fee, and if they do you can
23 ignore the license and fee. They must prove the burden of proof of willfulness which they
24 cannot do. If they do violate your rights you do have a right to sue them *Owens v City of*
25 *Independence and Maine v Thiboutot*, They have to give every consideration to you, and
26 that's the way it is.

1 The next case I want to talk about is *Boyd v United States*, 116 US 616: The court is to
2 protect against encroachment of constitutionality or security liberty. It is equivalent to a
3 compulsory production of papers to make the non-production of them a confession of the
4 allegations, which is pretended they will prove, and a lot of times that will happen in federal
5 cases.

6 All laws which are repugnant to the constitution are null and void. *Marbury v. Madison*
7
8 5 US.

9 Where rights secured by the constitution are involved, there can be no rule or law
10 making legislation which would abrogate abolish them. *Miranda v. Arizona*, 384 U.S. 436.

11 An unconstitutional act is not law. It confers no rights, it imposes no duties, it affords no
12 protections, it creates no office, it is in legal contemplation as inoperative as though it had never
13 been passed *Norton v Shelby County* 118 US 425.

14 The general rule is that an unconstitutional statute though having the form and name of
15 law in in reality no law, but is totally void. *16 Am Jur Vol. 2, sec 177, 256.*
16
17

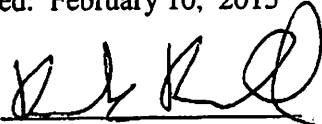
18 **VIII. PRAYER**

19 1. Since the Plaintiff (THE PEOPLE OF THE STATE OF CALIFORNIA) does not have a
20 cause of action for which relief can be granted, counsel (STATE PROSECUTOR) is specifically
21 precluded from performing his major task, therefore your honor, would it please the court at this
22 time I would motion most graciously for dismissal with prejudice for failure to state a cause of
23 action for which relief may be granted by this honorable court,

24 2. I require this Court to STRIKE THE NOTICE TO APPEAR, all related fee's, and to notify
25 the DMV of this and to dismiss any Warrant (if any). To not do so would cause Defendant
26 unrecoverable harm, physical and emotional stress.

27 3. I require this Court to submit Findings of Fact and Conclusions of Law if this
28 NOTICE TO APPEAR is not stricken.

1 Dated: February 10, 2015

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4 DEREK RUSSELL, In pro per
5 Without Prejudice UCC 1-308
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ENDORSED
FILED

FEB 20 2015

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA

DEREK RUSSELL
735 Pine Street
Santa Rosa, California [95404]
337-422-9200
In Pro Per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SONOMA

THE PEOPLE OF THE STATE OF CALIFORNIA	) Case No.: CHP84976TQ
Plaintiff,)
vs.	) Notice of Dispute, Demand for
	) Verification/Validation of Alleged
	) Debt;
DEREK RUSSELL, an individual,	) DATE: February 20, 2015
)
Defendant,	) TIME: 10 am
)
	) DEPT: 14-TRAFFIC

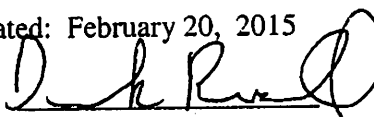
I received the above citation and notice to appear from you that alleges your position as a debt collector and appeared in court February 18, 2015. Accordingly, my records reflect you are not, neither have you ever been a known *creditor* of mine, or one that I have conducted any consumer transactions with. Therefore your identity is unknown to me at this time, and you appear to not be a known party to any transaction that I recall. This requires further information and documentation from you to verify your status and

1 capacity. Therefore I am respectfully demanding verification and or validation of any alleged
2 debt pursuant to 15 USC§1692g, and California Rosenthal Act §1788 *et seq* respectively.

3 The California Highway Patrol and the Sonoma County Superior Court are "debt
4 collector" pursuant to 15 USC§1692a(6), and California Rosenthal Act §1788. DEREK
5 RUSSELL is a "consumer" as that term is defined in 15 USC§1692a(3). CALIFORNIA
6 HIGHWAY PATROL AND THE SONOMA COUNTY SUPERIOR COURT , is not a creditor,
7 and I have not applied for, neither received any services or credit with your particular
8 agency.
9
10
11

12 In light of the foregoing please provide a certified true alleged original genuine
13 executed contract/agreement that memorializes the transaction between you and I that
14 supports you're your alleged debt. If your debt collection firm is unable to provide a sufficient
15 legal basis for your demanding payment, I will bring suit against your agency for violations
16 of federal and state consumer protection laws without further notice. Therefore this notice
17 can be construed as a Notice of Intent to bring such action if your response does not
18 support a legal/legitimate debt "owed" to your agency. In concluding, you are required to
19 respond within five (5) business days to my requests, should you fail to timely respond, and
20 or proffer a non- response, a suit will be filed in the appropriate court.
21
22
23
24

25 Dated: February 20, 2015

26 
27 DEREK RUSSELL, In pro per
28 Without Prejudice UCC 1-308